

*Motion to Vacate Judgment as to Co-Debtor
Liability of Corporate Officers for Non-Dischargeable Tortious Activity / factor
5523(a)(6)
5727*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

JOHN ALFRED HARMON
CHRISTINE MARTIN HARMON
(Chapter 7 Case 89-40101)

Debtors

GREAT SOUTHERN FEDERAL
SAVINGS BANK

Plaintiff

v.

JOHN ALFRED HARMON
CHRISTINE MARTIN HARMON

Defendants

Adversary Proceeding

Number 89-4036

FILED

at 9 O'clock & 01 min A M

Date 2/8/90

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *pub*

MEMORANDUM AND ORDER
ON MOTION TO VACATE JUDGMENT AGAINST CO-DEFENDANT

On January 5, 1990, a continued hearing on Debtor's Motion to Vacate Judgment Against Co-Defendant was heard. After consideration of the evidence adduced at trial and the briefs and

other documentation submitted by the parties I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On November 22, 1989, an Order was issued from this Court rendering the debt of John Alfred Harmon and Christine Martin Harmon to Great Southern Federal Savings Bank non-dischargeable on Section 523(a)(6) grounds, based upon Debtors' participation as corporate officers in the conversion of collateral of Great Southern Federal Savings Bank.

On December 11, 1989, Debtor Christine Martin Harmon moved to vacate the judgment as against her on the basis that there was no evidence of her active participation in the conversion. Christine Martin Harmon was an officer of J&C Limited, the corporation which committed the conversion, and was active in the operations of the business, at least on a part-time basis. Christine Martin Harmon is employed on a full-time basis as a speech pathologist, was not a signor on the original note securing the indebtedness of J&C Limited to Great Southern Federal Savings Bank and argues that she should not be now made jointly liable for such

debt because of the actions of a co-debtor. The amount of the judgment awarded on November 22, 1989, is \$51,091.15 plus interest.

CONCLUSIONS OF LAW

It is well established that officers and directors of a corporation will be held liable for the debts of a corporation to the extent that their participation in the commission of a tortuous act results in some harm to a third party and causes them to be liable to that third party. Ford Motor Credit Co., v. Owens, 807 F.2d 1556, 1559 (11th Cir. 1987) (per curiam); The officer or director is liable as an actor, not an owner. Matter of Hyers, 70 B.R. 764 (Bankr. M.D.Fla. 1987).

The trial evidence supports the non-dischargeable joint obligation of Christine Martin Harmon. Notwithstanding her full-time employment elsewhere, I do not find that Mrs. Harmon was merely an "innocent spouse" in this venture. Rather, the evidence shows that Mrs. Harmon has been active in a series of retail businesses with her husband, all of which liquidated, was a co-signor on a number of those obligations, and actively participated in the management of J&C Limited, albeit on a part-time basis, at the time of the J&C liquidation sale. The mere fact that she did not

personally sign the note with Great Southern will not relieve her from liability arising from active participation in non-dischargeable tortious conduct. In light of the foregoing, the Defendants' Motion to Vacate is denied.

O R D E R

In accordance with the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Defendants' Motion to Vacate Judgment against Co-Defendant is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 17th day of February, 1990.